



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SEP 08 2009

200949054

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A

Taxpayer B

Company M

Individual A

IRA V

IRA W

IRA X

IRA Y

Account M

Amount A

Amount B

Amount C

Amount D

Dear

This letter is in response to a ruling request submitted by your authorized representative dated May 7, 2007, as supplemented by correspondence dated December 19, 2007, January 14, 2008, and March 4, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A and Taxpayer B file their income tax return as married filing jointly. They both had IRAs (individual retirement accounts as described in section 408 of the Code) (IRA V and IRA W, respectively) with Company M.

Taxpayer A was aware that he and his wife were required to begin withdrawals from their IRAs when they attained age 70 ½. Taxpayers A and B each attained age 70 ½ in May 2007 and June 2006, respectively. During June 2006, they went to Company M to make arrangements for taking their required minimum distributions. Company M told Taxpayers A and B that they had two options available to them:

1. They could elect to withdraw the required minimum distributions from their IRAs but could not withdraw more than the required minimum distribution in each subsequent year, or
2. They could withdraw the entire amount from their IRAs and invest the proceeds in a taxable certificate of deposit with Company M.

Based on the options Company M presented them, Taxpayers A and B felt that a complete withdrawal from their IRAs was the only prudent choice and assented to the conversion of their IRAs into certificates of deposit with Company M.

On March 9, 2006, Taxpayer A withdrew Amount A from IRA V and deposited Amount A into Account M, a taxable account with Company M. Similarly, on March 9, 2006 Taxpayer B withdrew Amount B from IRA W and deposited Amount B into Account M.

On February 7, 2007, Taxpayers A and B met with Individual A to have their 2006 federal and state income tax returns prepared. During that meeting, Individual A discovered a form 1099-R for Taxpayer A and a form 1099-R for Taxpayer B reporting a distribution from their respective IRAs (IRAs V and W). Individual A inquired as to the rationale for the liquidation of the IRAs and then informed Taxpayers A and B that Company M had provided erroneous advice regarding their IRA distribution options. Taxpayers A and B had attempted to comply with the requirement that they begin to receive at least the required minimum distribution from their IRAs. They did not otherwise need to access their IRA funds, and did not spend the funds withdrawn from the IRAs.

On February 21, 2007, Taxpayer A withdrew Amount C from Account M and deposited it into IRA X. Similarly, on February 21, 2007, Taxpayer B withdrew Amount D from Account M and deposited it into IRA Y.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amounts A and B contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayers A and B is consistent with their assertion that their failure to accomplish a timely rollover was caused by errors committed by a financial institution.

Therefore, pursuant to section 408(d)(3)(i) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA V and Amount B from IRA W. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to roll over no more than Amount A minus all required minimum distributions. Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to roll over no more than Amount B minus all required minimum distributions. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A minus all required minimum distributions and Amount B minus all required minimum distributions will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

Any amount in excess of Amount A minus all required minimum distributions contributed to IRA X will be considered excess contributions subject to the tax on excess contributions imposed by section 4973 of the Code.

Any amount in excess of Amount B minus all required minimum distributions contributed to IRA Y will be considered excess contributions subject to the tax on excess contributions imposed by section 4973 of the Code.

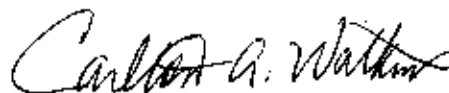
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact  
at

Sincerely yours,



Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter  
Notice of Intention to Disclose, Notice 437

cc: